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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/706,158	11/03/2000	Tor McPartland	57974-5002	6455

7590 02/15/2002

Jeffer Mangels Butler & Marmaro LLP  
2121 Avenue of the Stars  
Tenth Floor  
Los Angeles, CA 90067

EXAMINER

ROBINSON, ALLEN JAY

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 02/15/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/706,158

Applicant(s)  
McPhartland

Examiner  
Allen J. Robinson

Art Unit  
1616



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Jan 31, 2002
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 20) ☐ Other:

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The office action of December 21, 2001 failed to consider the declaration of Mr. Tor McPartland, filed December 20, 2000, which was apparently misplaced in the Patent Office. Therefore, the Office Action of December 21, 2001 is hereby withdrawn and the following action is given.

Claims 1, 3, 4, 7-9, 11, 13 and 17-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 3, 4, 7-9, 11, 13 and 17-20 are indefinite in failing to set forth relative proportions for all ingredients claimed. Claims 1 and 11 fail to differ in scope since the same composition is being claimed.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klopping (A), Van Tonder (B), Dotolo © and Wilkins, Jr. (AC).

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The Dotolo reference teaches that the claim designated D-limonene is an old insecticide employed with surfactants or emulsifiers of the type claimed and water. The Dotolo reference also discloses that the composition is non-toxic, non-polluting, biodegradable, non-irritating to animals. Further, the Dotolo reference teaches that the composition can be used in the form of a gel, which can be squeezed from a tube onto the hands and applied from the hands onto the coats of animals. ( See the abstract; column 1, lines 8-11, 20-41 and 45-50; column 3, examples 3-9; column 6 example 27, lines 39-40, 50-58 and 66-68; and column 7, lines 1-7.) The Wilkins, Jr. reference teaches that the claim designated D-limonene is an old insecticide used to control insects such as ants, termites, chinch bugs and fire ants. The Van Tonder and Klopping references teach that the claim designated surfactants and/or emulsifiers are old in the pesticidal art. Therefore, one skilled in this art would find ample motivation from the prior supra to employ the surfactants and/or emulsifiers of the Klopping and Van Tonder references as the carrier system for the old D-limonene insecticide with a reasonable expectation that said old surfactants and/or emulsifiers would be effective to apply the claimed insecticide to the locus of the claims. The determination of the optimum proportions of ingredients to employ is well within the skill of the worker in this art. No patentable distinction can be seen between the claims of record and the state of the art as taught by the prior art.

The declaration by Tor McPartland is insufficient to overcome the above rejection, since commercial success is not related to the technology of the instant application. The commercial success of a product of this type is usually due to various types of advertising. Moreover, the


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McPartland declaration teaches that the claim designated compositions are non-toxic and the above prior art agrees with the McPartland declaration that said compositions are non-toxic. Thus, a declaration showing unexpected and/or unobvious results in a side-by-side comparison of the non-toxic composition of the Dotolo reference vs applicant's non-toxic composition is needed.

References AB, AC, AD and AE are cited to show the state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allen J. Robinson whose telephone number is (703) 308-4524.

AJR  
February 13, 2002

  
ALLEN J. ROBINSON  
PRIMARY EXAMINER